

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Attorneys for Plaintiff
Home Depot U.S.A., Inc.

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| HOME DEPOT U.S.A., INC., | : | Misc. Action No. _____ |
| | : | |
| Plaintiff, | : | DECLARATION OF |
| | : | JOHN M. O'CONNOR, ESQ. |
| vs. | : | |
| | : | |
| TELADOC HEALTH, INC., | : | |
| | : | |
| Defendant. | : | |
| | : | |
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JOHN M. O'CONNOR, of full age, hereby declares as follows:

1. I am an attorney-at-law, a member of the law firm of Epstein Becker & Green, P.C., attorneys for plaintiff Home Depot U.S.A, Inc. ("Home Depot") in the above-entitled matter, and I am admitted to practice in the State of New York and the United States District Court for the Southern District of New York. I submit this Declaration in support of Home Depot's motion to compel Defendant Teladoc Health, Inc., ("Teladoc"), to comply with a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, by producing the current address and telephone number for Charles Vaughn Smith ("Mr. Smith"), a Teladoc care provider.

2. I represent Home Depot in an employment discrimination/retaliation lawsuit initiated by James J. Craig ("Mr. Craig"), a former Home Depot employee, against Home Depot

and several current Home Depot employees, that is presently pending in the United States District Court for the District of New Jersey, entitled “*James J. Craig, Plaintiff v. Home Depot U.S.A., Inc., Jennifer Hardy, Loyce Riggans, Jennifer Fuller, John and Jane Does 1-10, and ABC Corp. 1-10 (fictitiously named parties)*”, and bearing Civil Action No. 20-4520 (FLW)(TJB), (hereafter “the underlying lawsuit”)

3. In the underlying lawsuit, Mr. Craig seeks to recover compensatory damages including, without limitation, emotional distress damages, for the alleged discrimination/retaliation to which he claims he was subjected.

4. On August 24, 2022, Mr. Craig provided a signed authorization for the release of medical records maintained by Charles Vaughn Smith, a therapist who treated Mr. Craig for his alleged emotional injuries. A copy of the authorization form signed by James Craig is attached as Exhibit A.

5. On August 29, 2022, I arranged for Guaranteed Subpoena Service to serve a subpoena, the authorization signed by Mr. Craig, and an explanatory cover letter on Mr. Smith, at 417 4th Avenue, S.W., Largo, Florida, 33770, the address Mr. Craig provided for Mr. Smith. A copy of my August 29, 2022 letter to Guaranteed Subpoena Service is attached as Exhibit B.

6. Guaranteed Subpoena Service attempted to serve Mr. Smith at the address provided with the subpoena and executed authorization on August 30, 2022, September 1, 2022, and September 3, 2022. *See* Proof of Service, attached as Exhibit C. No one was present at the premises on any occasion and, according to the process server, the property appeared to be “empty.” *Id.*

7. Unable to serve Mr. Smith at the address provided, we asked Mr. Craig to provide an accurate address for Mr. Smith so that we could obtain Mr. Smith’s treatment records. In

response, counsel for Mr. Craig advised that he did not have any other addresses for his treating therapist, explaining that he connected with Mr. Smith through Teladoc. *See* September 14, 2022 email from plaintiff's counsel, attached as Exhibit D. Mr. Craig's counsel suggested we obtain Mr. Smith's contact information from Adam Vandervoort, Teladoc's Chief Legal Officer, because Mr. Smith "works for Teladoc." *Id.*

8. Teladoc is a telemedicine and virtual healthcare company which maintains its corporate headquarters and principle place of business at 2 Manhattanville Road, Purchase, New York.

9. After several efforts to reach Mr. Vandervoort by telephone and regular mail went unanswered, I arranged for Guaranteed Subpoena Service to serve Teladoc Health, Inc., with a subpoena, properly issued in the underlying lawsuit, compelling Teladoc to provide the current address and telephone number for Mr. Smith by December 15, 2022. A copy of my letter to Guaranteed Subpoena and the enclosed explanatory cover letter, Subpoena and authorization form to be served on Teladoc are attached as Exhibit E.

10. At 1:40 p.m., on December 1, 2022, Teladoc was served with the Subpoena, compelling production of Mr. Smith's address and telephone number by December 15, 2022. *See* Proof of Service, attached as Exhibit F.

11. Teladoc did not comply with the Subpoena, failing to provide Mr. Smith's current address and telephone number by December 15, 2022.

12. By letter dated December 15, 2022, sent by regular and certified mail, I complained to Mr. Vandervoort that Teladoc had failed to comply with the subpoena, and asked Mr. Vandervoort to ensure that Teladoc provide the address and telephone number Mr. Smith. A copy of my December 15, 2022 letter is attached as Exhibit G.

13. Although the copy of the letter sent by certified mail was received by Teladoc on December 19, 2022 (*see* USPS Tracking Notification, attached as Exhibit H), Teladoc again failed to respond.

14. Home Depot now initiates this Miscellaneous Action for the sole purpose of compelling Teladoc to comply with the subpoena, properly issued and served in the underlying lawsuit, by providing the current address and telephone number for Teladoc care provider Charles Vaughn Smith.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 13, 2023, in Newark, New Jersey.

s/John M. O'Connor

JOHN M. O'CONNOR